

STATE OF MINNESOTA
IN COURT OF APPEALS

A22-1000



Mark Washa,

Relator,

ORDER OPINION

vs.

Department of Employment and
Economic Development
File No. 48522089-3

Actalent Scientific, LLC,

Respondent,

Department of Employment and Economic
Development,

Respondent.

Considered and decided by Segal, Chief Judge; Reyes, Judge; and Slieter, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Relator Mark Washa seeks reversal of a decision by an unemployment-law judge (ULJ) that Washa was ineligible for unemployment benefits because he was discharged for employment misconduct. Respondent Minnesota Department of Employment and Economic Development (DEED) supports reversal. Respondent-employer Actalent Scientific, LLC has not appeared in the appeal.

2. Actalent Scientific employed Washa and placed him as a medical lab technician with North Memorial Clinics. On January 3, 2022, North Memorial terminated Washa's assignment because he refused to obtain a COVID-19 vaccination as required by

North Memorial's policies. Washa had requested an exemption from the vaccine requirement, but it was denied.

3. Washa was denied unemployment benefits, administratively appealed, and participated in a hearing before the ULJ. When the ULJ asked Washa about his reasons for refusing the COVID-19 vaccine, Washa testified:

[I]t's a matter of not wanting to be defiled. It's like the God that actually comes, like, has a spot in me, and I need to keep the spot good, otherwise he's not as able to enter as well, where ultimately I could go to hell over it. But it's a matter of purity of a person's body. Body is a temple type belief.

Washa testified that he had not received any vaccines for the past 15 years. Washa testified that his beliefs derive from the Bible and that he attends a Bible study with a group of friends about once every two weeks to "go over the Bible in different ways."

4. The ULJ issued a final decision determining that Washa had committed employment misconduct by failing to comply with the vaccination mandate, that his refusal of the vaccine was not based on sincerely held religious beliefs, and that he was therefore ineligible for benefits. The ULJ found: "Although Washa is a religious person, his testimony shows that it is more likely than not that his concerns about taking the Covid-19 vaccine are based on secular concerns about his perceived health risks of taking the vaccine, and not a sincerely held religious belief."

5. We may affirm the ULJ's decision or remand for further proceedings, or we may reverse or modify the ULJ's decision "if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are," as relevant here, "in violation of constitutional provisions" or "unsupported by substantial

evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2022).

6. An applicant is ineligible for unemployment benefits if he was discharged because of employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2022). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” *Id.*, subd. 6(a) (2022). “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). But even when the definition of employment misconduct is satisfied, a decision denying unemployment benefits may be subject to reversal if it violates constitutional rights. Minn. Stat. § 268.105, subd. 7(d)(1).

7. A decision denying unemployment benefits infringes an applicant’s free-exercise rights under the First Amendment if the applicant was forced to choose between his sincerely held religious beliefs and his employment. *See Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 832 (1989); *see also Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) (explaining that “a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program”). Such an infringement is subject to strict scrutiny and thus can only be sustained upon demonstration that it is the least-restrictive means to meet a compelling government interest. *Thomas*, 450 U.S. at 718.

8. The issue of whether employment misconduct is based on sincerely held religious beliefs is a fact issue. *See id.* at 716 (instructing that the “function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion”); *see also In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. App. 1991) (reviewing for clear error district court finding that religious belief was sincerely held). The ULJ’s factual findings should not be disturbed if the evidence in the record “reasonably tends to sustain those findings.” *Schmidgall*, 644 N.W.2d at 804.

9. The ULJ found that Washa’s decision to refuse the COVID-19 vaccination was not based on sincerely held religious beliefs but instead on “secular concerns about his perceived health risks of taking the vaccine.” Relator argues, and DEED has conceded, that this finding is not supported by substantial evidence. We agree.

10. Critically, Washa did not testify that he refused the vaccine because of safety concerns. Instead, he testified to concerns about “not wanting to be defiled” so that God . . . [can] enter” and he can avoid “go[ing] to hell over it.” He also testified to his consistent refusal of any vaccines over the past 15 years. The record in this case is distinguishable from others in which we have affirmed ULJ findings that vaccine refusals were not based on sincerely held religious beliefs.¹ *See Logue v. Olympus Am., Inc.*, No. A22-0282, 2022 WL 3581809, at *2 (Minn. App. Aug. 22, 2022) (concluding ULJ’s finding was supported by substantial evidence because relator “directly questioned the

¹ These opinions are nonprecedential pursuant to Minn. R. Civ. App. 136.01, subd. 1(c) (2022).

safety of the vaccines” and stated that she was unwilling to take vaccine “right now” but intended to reevaluate her decision based on subsequent studies); *Potter v. St. Joseph’s Med. Ctr.*, No. A18-0736, 2018 WL 6729836, at *2, *4 (Minn. App. Dec. 24, 2018) (concluding ULJ’s finding was supported by substantial evidence because relator testified to receiving other vaccinations that she perceived to be effective and testified that, “if the flu shot was scientifically proven to be effective she ‘probably would’ receive it”).

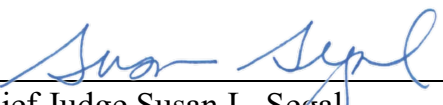
11. Because substantial evidence does not support the ULJ’s finding that Washa’s refusal of the vaccine was based on safety concerns rather than religious beliefs, we reverse the ULJ’s decision determining Washa was ineligible for unemployment benefits.

IT IS HEREBY ORDERED:

1. The ULJ’s decision is reversed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 2/22/23

BY THE COURT



Chief Judge Susan L. Segal